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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,964	01/23/2004	Jonathan M. Katz	VIT.P0030	7906
7590	09/26/2006		EXAMINER	
Edward G. Greive Renner, Kenner, Greive, Bobak, Taylor & Weber First National Tower, Fourth Floor Akron, OH 44308-1456				SOOHOO, TONY GLEN
		ART UNIT		PAPER NUMBER
		1723		

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/763,964	KATZ ET AL.
	Examiner Tony G. Soohoo	Art Unit 1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 24 July 2006.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 17-25 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 17-25 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 17, 19, 20, 22 and 24 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Multer 3404870, (previously cited).

The Multer reference discloses a blade having a leading edge and trailing edge with 1<sup>st</sup> and 2<sup>nd</sup> opposed one piece blade wings 10, 10, or 14, 14, see fig. 5 and fig. 8. with a twisted section at the outer extremities of the blades so as to form a flap which has a flap angle as seen in figure 5 and a canted angle from that of the leading edge as seen in figure 8.

With regards to the environment of a blender and the use of the blade for comminuting material, the Multer reference discloses a blade with the recited elements required by the claim. The environment of a blender or for comminuting solids is deemed as being directed to intended use of the blade and does not structurally distinguish the elements from the anticipated teaching of elements of the Multer reference. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Mark up of corresponding elements of 10/763,964 and Muller US 3404870

FIG. 8

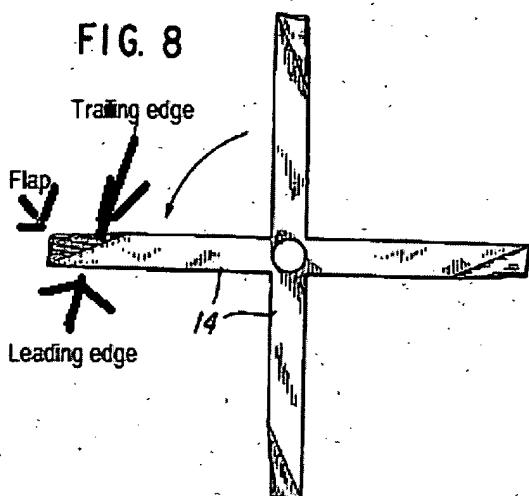
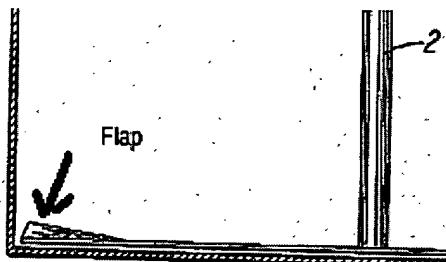


FIG. 5



Mark up of Muller 3404870 figures 5 and 8

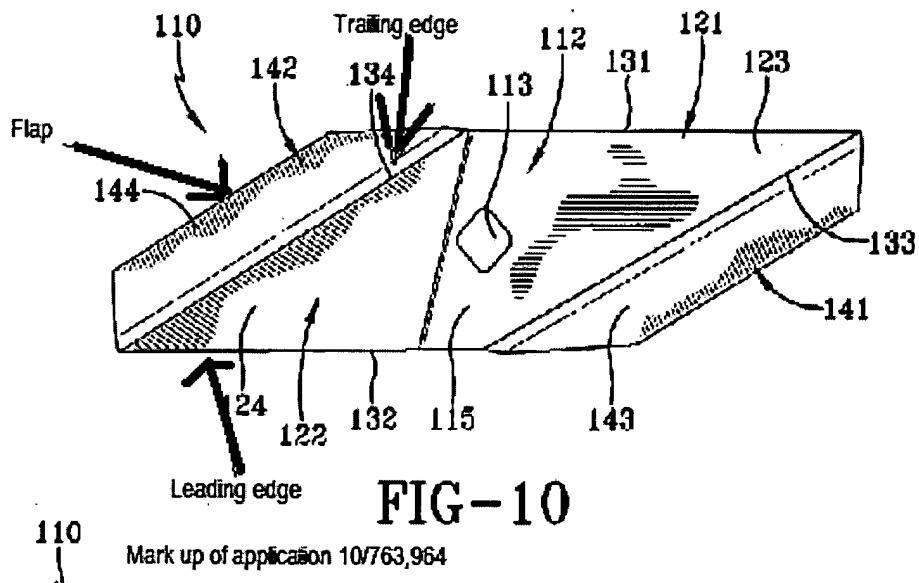


FIG-10

Mark up of application 10/763,964

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jonquieres 4147437 in view of Kolar et al 6974099 (based on a provisional application filed May 16, 2003).

The Jonquieres reference discloses a blender blade assembly with plural blades on sides of an impeller shaft f, as seen in figure 1 or figure 1d. Jonquieres teaches that each blade may be configured in an arrangement with a blade wing 1 with a leading edge see the left side of the blade wing 1, and further have an auxiliary flap 2, 3 extending downwardly and at a relative canted angle from that of the leading edge and in which the blade wing may narrow along from the root to the top, see figure 1a, 4,5,6,9,11. Also Jonquieres teaches the use of a hooked flap as seen in figure 9 or as discussed as a curved flap in a compound cylindrical-plano-conical shape, col. 4, line 49, 54. The Jonquieres reference also teaches the use of wing tips j, as seen in figure 11, which may be curved with convex or obtuse curvature from the tip, see col. 5, lines 18-25. Whereas the Jonquieres reference discloses that the use of modification of the tip and the trailing edges with flap may be utilized to produce an desired flow regime, it is deemed that it would have been obvious to one of ordinary skill in the art to combine the

provision of auxiliary flaps on the trailing edge and the tips as discussed by Jonquieres so as to optimize the flow regime in the vessel.

The Jonquieres reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of the leading edge being beveled. The reference to Kolar (et al) teaches that a blender blade with blade wings may be provided with a leading edge having a beveled edge. In view of the showing of the Kolar reference it is deemed that it would have been obvious to one of ordinary skill in the art to modify the leading edge of the mixer blade of the Jonquieres reference with a beveled edge so as to provide a more effective blending of material by the mixer blade of Jonquieres.

With regards to claim 19, Jonquieres also teaches that the flaps  $k$ ,  $k_1$  may be formed upward or downward and flat or curved in shape, see figure 12, col. 5, lines 25-40, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the flap angle to an upward as further suggested by the Jonquieres reference in order to optimize the flow regime.

With regards to claims 20-21 as the angle of cant or upward/downward flap angle, the Jonquieres reference discloses the use of a flap in the control of the fluid flow as seen and discussed in figure 1. Whereas the angle of cant or flap angle is merely a modification of the flap geometry in order to produce a desired flow regime, since it has been held that, absent any unexpected result, a mere change in form or shape on the basis of suitability is a matter of obvious mechanical design choice. *In re Dailey*, 149

USPQ 47 (CCPA 1976). It has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

***Allowable Subject Matter***

5. Claims 23 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments with respect to claims 17-21 directed to the Fasano 5052892 reference have been considered but are moot in view of the new ground(s) of rejection. Applicant further presents new claims 22-25.

7. Applicant does not address the Jonquieres 4147437 in view of Kolar et al 6974099 rejection, made in the previous office action with regards to claims 17-25.

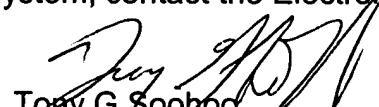
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 8AM-5PM, Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1723

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G Soohoo  
Primary Examiner  
Art Unit 1723